

REMARKS/ARGUMENTS

Favorable reconsideration of this application as presently amended and in light of the following remarks is respectfully requested.

Claims 1-3, and 5-21 are presently pending in this application, Claims 1 and 3 having been amended, Claims 4 and 22 canceled and Claims 2, 5 and 7-12 previously withdrawn from consideration as being directed to a non-elected invention.

In the outstanding Office Action, page 1, lines 4-9 of the specification was objected to as being superfluous and redundant; Claims 1, 3 and 6 were rejected under 35 USC §102(b) as being anticipated by Zhu et al (US 5,838,608); Claims 1, 3 and 6 were rejected under 35 USC §102(e) as being clearly anticipated by Hoffmann et al (US 2002/00118361), Claims 13-21 were allowed and Claims 4 and 22 were objected to as being dependent upon a rejected base claim, but otherwise allowable if rewritten in independent form.

First, Applicants acknowledge with appreciation the allowance of Claims 13-21 and the indication that Claims 4 and 22 include allowable subject matter. In light of this indication, and in order to expedite issuance of a patent from the present application, Claim 1 has been amended to include the limitations of allowable Claim 4, Claim 3 has been amended to depend from amended Claim 1, and Claims 4 and 22 have therefore been canceled. Accordingly, Claims 1, 3 and withdrawn Claim 5 which depends from Claim 1, are believed to be in condition for allowance, and only Claim 6, discussed in more detail hereinafter, remains in issue.

Applicants respectfully traverse the outstanding objection to the specification on the basis that this objection is clearly contrary to MPEP 201.13, para. G, at page 200-73 of the May 2004 version of the MPEP. As noted in that section of the MPEP,

... Applicant may incorporate by reference the foreign priority application by including a statement in the U.S. application as-filed. The inclusion of the incorporation by reference of the foreign priority application will permit an applicant to amend the U.S. application to include any subject [matter] in the foreign priority application without raising the issue of new matter. Thus the incorporation by reference statement can be relied upon to permit the entering of a portion of the foreign priority application into the U.S. application when a portion of the foreign priority application has been inadvertently omitted ... or to permit the correction of translation error where the priority application is in a non-English language.

As the incorporation by reference permits correction of translational errors etc without raising a question of new matter, and as such incorporation is clearly permitted by the MPEP, the objection to the specification is believed to have been mistakenly made and is respectfully traversed.

Turning now to the merits of Claim 6, the sole remaining claim in issue, Applicants point out that Claim 6, *inter alia*, recites,

... a magnetoresistive effect device including a first magnetic layer, nonmagnetic layer, and second magnetic layer, wherein the magnetoresistive effect device is a magnetoresistive effect device constituted by a magnetic recording layer including a magnetic layer, a tunnel blocking layer including a nonmagnetic layer, and a magnetized fixed layer including a magnetic layer, wherein the planar shape of the magnetic recording layer coincides with the planar shape of the crossing portion between the first wiring and the second wiring and the planar shape of the magnetized fixed layer coincides with the planar shape of the first wiring.

In the device of Claim 6, the planar shape of the magnetic recording layer coincides with *the planar shape of the crossing portion* between the first wiring and the second wiring, and the planar shape of the magnetized fixed layer coincides with *the planar shape of the first wiring*. This structure is shown in original FIGS. 39A and 39B, and is obtained by working magnetic recording layer in such a manner that *the planar shape* thereof coincides with *that of the crossing portion* between the first wiring and the second wiring, and the magnetized fixed layer is not worked.

In contrast, Zhu et al. does not disclose the above feature of a magnetoresistive effect device including a first magnetic layer, nonmagnetic layer, and second magnetic layer, and the details thereof as stated in Claim 6. On the contrary, as shown in FIG. 3 of Zhu et al., magnetic layers 36 and 38 are worked in such a manner that the planar shape of each of magnetic layers 36 and 38 coincides with that of crossing portion between column line 25 and row line 28. This structure is also clearly shown in FIGS. 5-7 which illustrate the Zhu et al manufacturing process. In view of this distinction, it is respectfully submitted that the subject matter stated in pending Claim 6 is neither anticipated nor obviated by Zhu et al.

Applicants further traverse the rejection of Claim 6 under 35 USC 102(b) as being anticipated by Hoffmann et al., since as clearly shown in FIGS. 8A and 9 of Hoffmann et al., the above feature of a magnetoresistive effect device including a first magnetic layer, nonmagnetic layer, and second magnetic layer, and the details thereof as stated in Claim 6 is not disclosed in Hoffmann et al. Thus, it is respectfully submitted that the subject matter stated in pending Claim 6 is neither anticipated nor obviated by Hoffmann et al.

Consequently, in view of the present amendment and in light of the above comments, no further issues are believed to be outstanding, and the present application is believed to be in condition for formal allowance. An early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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